

## Department of Energy

## § 780.34

the notice shall be deemed an acquiescence to that action and may result in a declaration by the Board that the patent is affected with the public interest.

### § 780.23 Hearing and decision.

If a timely request for a hearing is made by any party, the Board will proceed with a hearing and decision. If a hearing is not requested, the Board shall prepare and issue its decision on the record.

### § 780.24 Criteria for declaring a patent affected with the public interest.

A patent shall be declared to be affected with the public interest pursuant to section 153a of the Act upon the Board's final decision that:

- (a) The invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and
- (b) The licensing of such invention or discovery under section 153 of the Act is of primary importance to effectuate the policies and purposes of the Act.

## Subpart C—Application for a License Pursuant to Section 153b(2) of the Atomic Energy Act of 1954

### § 780.30 Filing of application.

An applicant for a license pursuant to section 153b(2) of the Act, under a patent which the Department has declared to be affected with the public interest, shall file an application with the Board in accordance with § 780.5. The Board will docket the application and serve notice of the docketing upon all parties.

### § 780.31 Contents of application.

Each application shall contain, in addition to the requirements specified in § 780.5, the following information:

- (a) The activities in the production or utilization of special nuclear material or atomic energy to which applicant proposes to apply the patent license;
- (b) The nature and purpose of the applicant's intended use of the patent license;

(c) The relationship of the invention or discovery to the authorized activities to which it is to be applied, including an estimate of the effect on such activities stemming from the grant or denial of the license;

(d) Efforts made by the applicant to obtain a patent license from the owner of the patent;

(e) Terms, if any, on which the owner of the patent proposes to grant the applicant a patent license;

(f) The terms the applicant proposes for the patent license; and

(g) A request for either a hearing or a decision on the record.

### § 780.32 Response and request for hearing.

Any party within thirty (30) days after service of the notice of docketing of the application:

(a) May file with the Board a response containing a concise statement of the facts or law or any other relevant information which that party believes should be considered by the Board in opposition to or in support of the proposed application; and

(b) May file a request for a hearing or for a decision on the record.

### § 780.33 Hearing and decision.

If any party requests a hearing, the Board will proceed with a hearing and decision. If a hearing is not requested, the Board shall on the basis of the record prepare and issue its decision.

### § 780.34 Criteria for decision to issue a license.

A license shall issue to the applicant to use the invention covered by the patent declared to be affected with the public interest pursuant to subsection 153b(2) of the Act upon a final decision that:

(a) The activities to which the patent license is proposed to be applied are of primary importance to the applicant's conduct of an activity authorized under the Act; and

(b) The applicant has made efforts to obtain reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by the Board in the case of a national